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CASE NO. 80-1859

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

DAVID BALTER,

Petitioner,

vs.

ETHYL CORPORATION,

Respondent.

BRIEF FOR AMICUS CURIAE THE STATE OF FLORIDA

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BRIEF OF AMICUS CURIAE
THE STATE OF FLORIDA

INTEREST OF AMICUS

The Attorney General of the State of Florida, pursuant to Rule 36.4, Rules of the Supreme Court of the United States, respectfully submits this brief on behalf of the State of Florida urging that this

Petition for Writ of Certiorari be denied.

The State of Florida, with twenty judicial circuits, five district courts of appeal and a state supreme court, wishes to preserve its judicial system in which litigants obtain, without unreasonable delay and expenses, just judicial decisions of finality.

SUMMARY OF ARGUMENT

Consistent with prior decisions of this Court, the Petition for Writ of Certiorari should be denied. Petitioner's equal protection attack on the Florida appellate review system, a system which closely resembles the federal system, was not presented to the state courts below. The attack is precluded for review by certiorari at this time.

Further, the district court's finding that the requisite elements of the tort of interference with contractual relationships were not present, and its reversal of the trial court's order because of that misapplication of state law, was consistent with the function and authority of a state appellate court. The reversal was based upon adequate and independent state grounds.

Finally, there is no substantial federal question raised. Petitioner was afforded a jury trial, a benefit for which there is no federal constitutional requirement. Florida's appellate structure which would allow the state's highest court to decline to review an appellate court decision reversing a trial court order on a matter of state law is a permissible product of state policy which

is consistent with constitutional equal protection requirements. Only invidious discrimination, wholly absent here, is prohibited. There is no constitutional requirement that a state adopt a unifying method of appeals which will insure the same decisions on particular questions which may arise within a state.

This Petition for Writ of Certiorari should be denied.

ARGUMENT

I. PETITIONER'S EQUAL PROTECTION ATTACK ON FLORIDA'S APPELLATE REVIEW SYSTEM WAS NOT RAISED IN THE STATE COURTS.

The issue posed by Petitioner in his initial argument for granting the Writ of Certiorari appears for the first time at the chronicle of litigation in his petition to this Court. That issue is not one which was presented below, hinted below, much less argued or decided below. The issue exists, at best, as a tangential collateral attempt to breathe life into an appeal which has run its natural and proper legal course to finality.

This untimely created issue is not properly before this Court. In Cardinale v. Louisana, 394 U.S. 437, 438-439 (1969) this Court was petitioned to hear an

attack on a Louisana criminal statute requiring that confessions be admitted into evidence. Although certiorari was granted, the fact emerged in oral argument that the issue had never been raised or decided in the state courts below. Citing a number of decisions on the point, this Court recognized its error in granting certiorari and stated that it has consistently refused to decide federal constitutional issues raised for the first time on its review of state court decisions.

> In addition to the question of jurisdiction arising under the statute controlling our power to review final judgments of state courts, 28 U.S.C. §1257, there are sound reasons for this. Questions not raised below are those on which the record is very likely to be inadequate, since it certainly was not compiled with those questions in mind. And in a

> federal system it is important that state courts be given the first opportunity to consider the applicability of state statutes in light of constitutional challenge, since the statutes may be construed in a way which saves their constitutionality. Or the issue may be blocked by an adequate state ground. Even though States are not free to avoid constitutional issues on inadequate state grounds (citation omitted), they should be given the first opportunity to consider them.

See also Moore v. Illinois, 408 U.S. 786, 789; Beck v. Washington, 369 U.S. 541 (1962); Nelson v. County of Los Angeles, 362 U.S. 1 (1960); Edelman v. California, 244 U.S. 357 (1952); Rooker v. Fidelity Trust Co., 261 U.S. 114 (1923).

The conclusion which follows from Cardinale and its kin is entirely consistent with the requirements of this Court's jurisdictional statute, 28 U.S.C. §1257, under which review is sought by

Petitioner. The statute provides that "final judgments or decrees rendered by the highest court of a State in which a decision could be had (emphasis supplied) may[1] be reviewed by the Supreme Court." On the face of Petitioner's brief and in light of the argument presented above, it is apparent that no decision "could be had" by or from Florida's appellate courts on the issue here presented by

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[1]The non-mandatory nature of this statute is comparable to the 1980 Amendment to Article V, Section 3(b) of the Florida Constitution upon which certiorari was sought to the Florida Supreme Court. As noted by Petitioner, the resulting Appellate structure in Florida resembles the Federal appellate system in that the state District Courts of Appeal, like the Federal circuit courts, become the primary and, in most cases, the ultimate reviewing body for decisions of the trial courts.

the Petitioner for the simple reason that the Petitioner did not afford the Florida District Court of Appeal nor the Florida Supreme Court that opportunity.

Denial of the Petition should be granted accordingly.

II. THE PETITION FOR CERTIORARI PRESENTS NO SUBSTANTIAL FEDERAL QUESTION.

A. The Underlying Issue is a Determination of State Substantive Law.

The District Court's decision upon which this Petition for Certiorari is based derives not from characteristics of the Florida Appellate court system which Petitioner here attempts to put at issue. Rather, the decision derives from the District Court's interpretation of state law. In finding that "the evidence establishes as a matter of law that Ethyl committed no such tort" (Ethyl Corporation v. Balter, 386 So.2d 1220, 1221 (3rd DCA 1980)) the District Court had reviewed the elements of the tort of interference with contractual relationship under state court decisions.

This Court has historically held that review by it of decisions concerning non-federal or local matters is generally precluded. Neblett v. Carpenter, 305 U.S. 297 (1938); Jankovich v. Indiana Toll Road Commission, 379 U.S. 487 (1965); Wilson v. Loew's Inc., 355 U.S. 597 (1958); Fox Film Corp. v. Muller, 296 U.S. 207 (1935). The Supreme Court does not sit to determine matters of local law. Dixon v. Duffy, 344 U.S. 143 (1953). Certainly, the elements for the tort of interference of contract under Florida law are local matters which are properly and exclusively decided by the Florida Court.

Further, this Court has historically declined to review decisions of state courts which rest upon adequate and

independent state grounds. As stated in Herb v. Pitcairn, 324 U.S. 117, 125 (1944)

> The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and Federal judicial systems and in the limitations of our own jurisdiction. Our only power over state judgments is to correct them to the extent that they[2] incorrectly adjudge federal rights. And our power is to correct wrong judgments not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of Federal laws, our review could amount to nothing more than an advisory opinion.

The conclusion to decline federal review is appropriate here. The Florida

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[2]Conspicuously, Petitioner's claim in the state circuit court below was for interference with contract, obviously, a non-federal claim.

District Court applied state law to make the determination that the evidence before the state circuit court did not sustain the finding that the elements of the tort of interference with contract had been shown. The district court's conclusion and order are totally consistent with the power of an Appellate court to determine, as a matter of law, if the conclusion of the trial court represents a misapplication of the law governing the facts disclosed. Holland v. Gross, 89 So.2d 255 (Fla. 1956) 63 A.L.R.2d 920; Goldstein v. Goldstein, 310 So.2d 361 (3rd DCA 1975). The law governing the facts is the law in Florida for the tort attributed to Ethyl Corporation. The District Court found as a matter of law, that law was misapplied. Evaluations of

evidence reached by the application of erroneous legal standards are erroneous evaluations. Protective Committee for Independent Stock Holders of T.M.T. Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 445 (1968). Such evaluation would, as here, require reversal.

B. There is No Constitutional Right to Civil Jury Trial in State Court.

Petitioner's suggestion that the Florida District Court decision "deprived" him of "his constitutional rights to a jury trial" guaranteed under the Eighth Amendment to the United States Constitution is simply deficient as a means of sustaining this Petition. His suggestion presents no federal question. The Eighth Amendment speaks to courts of

"the United States", not to courts of the sovereign states. Even disregarding the fact that Petitioner had his jury trial before the state circuit court, there remains the uncontroverted fact that the federal constitution does not guarantee civil litigants a jury trial in state court. Fay v. New York, 232 U.S. 261 (1947). That conclusion is conceded by Petitioner. It necessarily follows that Petitioner's attempt to predicate a review by certiorari upon that alleged "deprivation" is foreclosed by the Fay decision for lack of legal controversy. The absence of a constitutional necessity for a jury trial having been decided by this Court, Petitioner's position advocating such a right is so devoid of legal merit as to require denial of his

Petition for Writ of Certiorari and to be unworthy and incapable of further decision by this Court. See Equitable Life Assurance Society v. Brown, 187 U.S. 308, 311 (1902); Zucht v. King, 260 U.S. 174, 177 (1922); Hunter Company v. McHugh, 320 U.S. 222, 227 (1943).

C. The Equal Protection Clause Does Not Assure Uniformity of Judicial Decisions.

Petitioner's reliance on the equal protection clause is misplaced. Reduced to its basics, Petitioner's argument is that the Florida law concerning the tort of interference with contract was misapplied by the Florida district court and that the Florida Supreme Court's denial to review the purported misapplication requires that the Florida Appellate

system be stricken.[3] Petitioner's argument overlooks the fact that the Fourteenth Amendment to the United States Constitution does not assure uniformity of judicial decisions or immunity from judicial error. Beck v. Washington, 369 U.S. 541, 555 (1962); Milwaukee Electric Light Co. v. Wisconsin, 252 U.S. 100, 106 (1920). As recognized in Beck, "were it otherwise, every alleged misapplication of state law would constitute a federal constitutional question."

In reviewing an attack on the Ohio judicial system, this Court observed in

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[3]The logical consequence of Petitioner's illogical argument is that the appellate system of virtually every state in the nation, as well as the ten circuit federal system, is constitutionally deficient due to the possibility of conflicting law coexisting within each system at a given moment.

Ohio ex rel. Bryant v. Akron Metropolitan Park District, 281 U.S. 74, 80 (1930)

> The provision of the State Constitution which is attacked is one operating uniformly throughout the entire state. The state has wide discretion in respect to establishing its systems of courts and distributing their jurisdiction. It has been held by this Court that the equal protection clause of the Fourteenth Amendment is not violated by diversity in the jurisdiction of the several courts of a state as to subject matter or finality of decisions if all persons within the territorial limits of the respective jurisdictions of the state courts have an equal right in like cases under like circumstances to resort to them for redress . . . . It is thus well established that there is no requirement of the federal constitution that the state shall adopt a unifying method of appeals which will insure to all litigants within the state the same decisions on particular questions which may arise.

Obviously, the State of Florida is free to limit the jurisdiction of its

Supreme Court in accordance with its state policy.

The equal protection standard by which Petitioner would gauge the Florida appellate system is too lofty and is without legal precedent. The equal protection clause relates to equality between persons rather than between areas, and territorial uniformity is not a constitutional prerequisite - only relevancy to the achievement of a legitimate state objective is required and only invidious discrimination is barred. See McGowan v. Maryland, 366 U.S. 420 (1961).

Because the relevancy of the Florida appellate structure to effective, efficient, and attainable judicial review is apparent from the provisions of the Florida Constitution, Article V, Section

3(b) (1968 Revision as amended 1980) and because there exists no showing of invidious discrimination, the Florida appellate system which Petitioner would strike exceeds the required standard.

CONCLUSION

Balter's Petition for Writ of Certiorari presents no issue capable or worthy of review. Denial of the Petition is, accordingly, appropriate.

Respectfully submitted,

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